

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

V.

DAVID W. TIPPENS,

Defendant.

NO. CR16-5110 RJB

## **STIPULATION OF THE PARTIES REGARDING THE NIT AND RELATED MATTERS**

The United States of America, by and through Annette L. Hayes, United States Attorney, and Matthew Hampton and Grady J. Leupold, Assistant United States Attorneys, and the Defendant, DAVID W. TIPPENS, and his attorney, Colin Fieman, hereby stipulate and agree to the following:

20        1. Between February 20 and March 4, 2015, the FBI maintained  
21 administrative control of a website operating on the anonymous Tor network as part of an  
22 investigation into individuals using that site to traffic in child pornography.

23       2. During this period, the FBI deployed a Network Investigative Technique  
24 (the “NIT”) to computers that logged into this website pursuant to a warrant issued by a  
25 magistrate judge in the United States District Court for the Eastern District of Virginia.

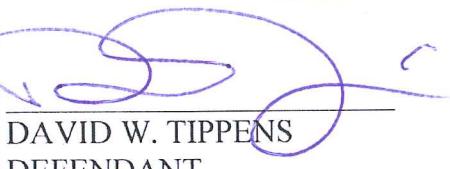
26       3. The purpose of the NIT was to obtain certain information from those  
27 computers to which it was deployed.

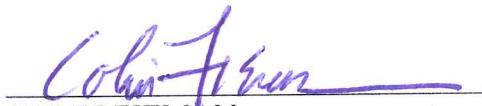
1       4. In order to deploy the NIT to those computers, the FBI used a computer  
2 "exploit" to take advantage of an existing vulnerability that would allow the NIT to  
3 execute on a target computer without the knowledge of the computer's user.

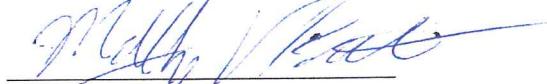
4       5. The government has not disclosed the exploit or vulnerability to the  
5 defense. It has also not disclosed information related to the servers that received the  
6 results from the deployment of the NIT. However, the Court has previously found in this  
7 case that it is not required to do so.

8       6. It is possible that an exploit could make temporary or permanent changes to  
9 the security settings of a user's computer that could allow someone to subsequently run  
10 commands on that computer without the user's knowledge.

11  
12       DATED this 23<sup>rd</sup> day of February, 2017.

13         
14       DAVID W. TIPPENS  
15       DEFENDANT

16         
17       COLIN FIEMAN  
18       ATTORNEY FOR DAVID TIPPENS

19         
20       MATTHEW P. HAMPTON  
21       GRADY J. LEUPOLD  
22       ASSISTANT UNITED STATES ATTORNEYS